UDA Sentosa Sdn Bhd v Jonathan a/l Sinnappan & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCvC-478–08 OF 2020
QUAY CHEW SOON JC
12 JULY 2021

Land Law — Vacant possession — Claim for vacant possession — Land alienated to plaintiff for development — Whether defendants were illegal squatters — Whether defendants had right in law or in equity over land — Whether squatters were licensees coupled with equity — Whether plaintiff had indefeasible title and interest — Whether plaintiff was entitled to vacant possession of land — Whether supply of utilities proved ownership of land — Whether defendants entitled to compensation

The plaintiff commenced an action against the defendants for vacant possession of a piece of land ('the land'). In 2016, the Pejabat Tanah dan Galian Wilayah Persekutuan ('PTGWP') had alienated the land to the plaintiff for the purpose of building affordable housing. In consideration thereof, the plaintiff had paid land premium in the sum of RM8,615,490 on 16 February 2017. PTGWP thereafter issued to the plaintiff the document of title to the land duly registered in the name of the plaintiff. Upon a visit made by the plaintiff as the registered proprietor of the land, it was discovered there were wooden residential houses and several business premises erected on the land. These were occupied by the defendants. The plaintiff averred that it had not rented out or granted any permission to the defendants or any other party authorising the construction on or occupation of the land. Thus, the defendants' entry and occupation of the land was without licence or consent of the plaintiff. The defendants were illegal squatters.By reason thereof, the plaintiff had served two eviction notices to the defendants demanding the defendants to vacate and remove all structures erected on the land. The plaintiff contended that: (a) the defendants and the occupants therein had no right to occupy and remain on the land; (b) the occupation of the land by the defendants was an act of trespass and was illegal; (c) as registered proprietor, the plaintiff was entitled to vacant possession of the land; (d) the defendant had caused the plaintiff to suffer losses and damages by reason of being on the land, by which prevented the plaintiff from commencing the construction of affordable housing on the land. The defendants failed to comply with the said eviction notices and argued that: (i) most of the defendants had been occupying the land for more than 80 years without objection from any authorities; (ii) Dewan Bandaraya Kuala Lumpur ('DBKL') had full knowledge of the defendants' occupation as it had conducted a census 20 years ago and again in 2017; (iii) DBKL had provided number plates to the defendants; and (iv) DBKL had facilitated the defendant's request

in applying for a name change in the water bill. The defendants further contented thatwhen the alienation of the land was applied for, the plaintiff did not inform or send any notice to them to vacate the land and the plaintiff did not offer the affordable houses to the defendants, who would not resist handing over vacant possession of the land if they were allowed to buy the affordable houses. The defendants, in the alternative, demanded to be paid reasonable compensation. Further, the defendants allege that in an originating summons ('OS action') filed by the plaintiff under O 89 of the Rules of Court 2012 ('O 89 of the ROC'), the court purportedly ruled that the defendants were not trespassers and directed the plaintiff to proceed with a writ action. The defendants, therefore, claimed they were 'licensees coupled with equity'.

Held, allowing the plaintiff's claim with costs:

(1) In submissions, the defendants conceded that they were not denying the plaintiff's ownership of the land. To be sure, the plaintiff's ownership of the land was clearly established at trial. Firstly, PW1 testified that PTGWP had alienated the land to the plaintiff. PW2 gave evidence regarding the application and subsequent alienation of the land. From the testimony of PW2, it was established that the plaintiff had paid the land premium and other requisite sums. Secondly, PTGWP has issued to the plaintiff the document of title to the land. The plaintiff was duly registered as proprietor of the land. As registered proprietor, the plaintiff enjoyed an indefeasible title and interest in the land (see paras 16 & 18–19).

(2) The defendants' entry and occupation of the land were without permission from the previous owner of the land ie PTGWP. And also without permission of the plaintiff, the current owner of the land. Hence, the defendants were trespassers and illegal squatters. They had no right or interest in the land. As illegal squatters, the defendants had no protection in law or in equity to enable them to claim a right to occupy the land. The plaintiff, as registered owner, was entitled to evict the defendants (see paras 31–32).

(3) The defendant's contention that they had been staying on the land for over 80 years was a bare averment which was not proven at trial. No documentary evidence was tendered to show that the defendants or their forefathers had been in occupation of the land for over 80 years. Even if true, occupation over land, for however long a period, did not confer any right over the said land to the occupier. Adverse possession was not recognised in law (see paras 37 & 39).

(4) Assuming that water, electricity and telephone facilities were connected to the defendants' houses on the land, that did not tantamount to any form of permission for the defendants to occupy the land. The regulators providing those utilities were not the owners of the land. They were not

in the position to grant any such permission. The provision of such utilities did not confer any equity or interest on the land to the defendants. It did not change the fact that they were occupying the land as squatters. The issue raised by the defendants with regard to the change of name on the bill did not help the defendants' case at all. Instead, it confirmed the defendants was occupying the land as a 'setinggan' (squatter) (see paras 51 & 55–56).

(5) The defendants had not proven any form of permission to occupy the land. The defendants' occupation of the land was without licence or consent from the previous owner (PTGWP) or the current owner ie the plaintiff. The defendants' occupation of the land was illegal. As trespassers and illegal squatters, the defendants had no right in law or in equity over the land. The plaintiff was, therefore, entitled to possession of the land. As squatters, the defendants had no cause of action against the plaintiff. The defendants were not legally entitled to any compensation (see paras 60 & 64).

(6) There was no obvious damage to the land arising from the defendants' occupation. The plaintiff simply said that the development of the land was hindered and delayed. However, the plaintiff did not adduce evidence as to what its loss is, as a result of the delay. Since it was not established that the plaintiff had suffered any actual loss, there was no award of damage awarded to the plaintiff (see para 78).

[Bahasa Malaysia summary

Plaintif memulakan tindakan terhadap defendan bagi milikan kosong sekepimg tanah ('tanah tersebut'). Pada tahun 2016, Pejabat Tanah dan Galian Wilayah Persekutuan ('PTGWP') telah menyerahmilik tanah tersebut kepada plaintif bagi tujuan pembinaan rumah mampu milik. Sebagai balasan, plaintif telah membayar premium tanah sebanyak RM8,615,490 pada 16 Februari 2017. PTGWP selepas itu mengeluarkan kepada plaintif dokumen hak milik tanah yang didaftarkan atas nama plaintif. Selepas lawatan yang dibuat oleh plaintif sebagai pemilik berdaftar tanah tersebut, ianya didapati terdapat rumah kediaman kayu dan beberapa premis perniagaan didirikan di atas tanah tersebut. Ia telah diduduki oleh defendan. Plaintif menegaskan bahawa ia tidak menyewakan atau memberikan apa-apa kebenaran kepada defendan atau mana-mana pihak lain yang diberi kebenaran membina atau menduduki atas tanah tersebut. Oleh itu, kemasukan dan pendudukan defendan ke atas tanah tersebut adalah tanpa lesen atau persetujuan plaintif. Defendan adalah setinggan haram. Oleh sebab itu, plaintif telah menyampaikan dua notis pengusiran kepada defendan menuntut defendan mengosongkan dan mengalihkan kesemua struktur yang didirikan di atas tanah tersebut. Plaintif berpendapat bahawa: (a) defendan dan penghuni di dalamnya tidak mempunyai hak untuk menduduki dan tinggal di atas tanah tersebut; (b) pendudukan tanah oleh defendan adalah satu perbuatan menceroboh dan

adalah menyalahi undang-undang; (c) sebagai pemilik berdaftar, plaintif berhak kepada milikan kosong tanah tersebut; (d) defendan telah menyebabkan plaintif mengalami kerugian dan kerosakan kerana berada di atas tanah tersebut, yang menghalang plaintif daripada memulakan pembinaan rumah mampu milik di atas tanah tersebut. Defendan gagal mematuhi notis pengusiran tersebut dan berhujah bahawa: (i) kebanyakan defendan telah menduduki tanah tersebut selama lebih daripada 80 tahun tanpa bantahan daripada mana-mana pihak berkuasa; (ii) Dewan Bandaraya Kuala Lumpur ('DBKL') mempunyai pengetahuan penuh tentang pendudukan defendan kerana ia telah menjalankan bancian 20 tahun lalu dan sekali lagi pada 2017; (iii) DBKL telah menyediakan nombor plat kepada defendan; dan (iv) DBKL telah membenarkan permohonan defendan dalam memohon pertukaran nama dalam bil air. Defendan seterusnya berpendapat bahawa apabila penyerahan hak milik tanah tersebut dipohon, plaintif tidak memaklumkan atau menyampaikan sebarang notis kepada mereka untuk mengosongkan tanah tersebut dan plaintif tidak menawarkan rumah mampu milik kepada defendan, yang tidak akan membantah untuk menyerahkan milikan kosong tanah tersebut sekiranya mereka dibenarkan membeli rumah mampu milik. Defendan, sebagai alternatif, menuntut untuk dibayar pampasan yang munasabah. Selanjutnya, defendan mendakwa bahawa dalam saman pemula ('tindakan OS') yang difailkan oleh plaintif di bawah A 89 Kaedah-Kaedah Mahkamah 2012 ('A 89 KKM'), mahkamah kononnya memutuskan bahawa defendan bukan penceroboh dan mengarahkan plaintif meneruskan tindakan writ. Oleh itu, defendan mendakwa mereka adalah 'pemegang lesen berserta ekuiti'.

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Dalam hujahan, defendan mengakui bahawa mereka tidak menafikan pemilikan plaintif ke atas tanah tersebut. Yang pasti, hak milik plaintif ke atas tanah tersebut telah jelas dibuktikan dalam perbicaraan. Pertama, PW1 memberi keterangan bahawa PTGWP telah memberi hak milik tanah kepada plaintif. PW2 memberi keterangan berhubung permohonan dan pemberian hak milik tanah tersebut. Daripada keterangan PW2, ia telah dibuktikan bahawa plaintif telah membayar premium tanah dan jumlah lain yang diperlukan. Kedua, PTGWP telah mengeluarkan kepada plaintif dokumen hakmilik tanah tersebut. Plaintif telah didaftarkan sebagai pemilik tanah. Sebagai pemilik berdaftar, plaintif menikmati hak milik dan kepentingan yang tidak boleh disangkal pada tanah tersebut (lihat perenggan 16 & 18–19).

(2) Kemasukan dan pendudukan defendan ke atas tanah tersebut adalah tanpa kebenaran daripada pemilik tanah terdahulu iaitu PTGWP. Dan juga tanpa kebenaran plaintif, pemilik tanah sekarang. Oleh itu, defendan adalah penceroboh dan setinggan haram. Mereka tidak mempunyai hak atau kepentingan dalam tanah tersebut. Sebagai

A setinggan haram, defendan tidak mempunyai perlindungan dari segi undang-undang atau ekuiti untuk membolehkan mereka menuntut hak untuk menduduki tanah tersebut. Plaintif, sebagai pemilik berdaftar, berhak untuk mengusir defendan (lihat perenggan 31–32).

B (3) Pendapat defendan bahawa mereka telah tinggal di tanah tersebut selama lebih 80 tahun adalah kenyataan yang tidak dapat dibuktikan dalam perbicaraan. Tiada bukti dokumentari dikemukakan untuk menunjukkan bahawa defendan atau moyang mereka telah menduduki tanah tersebut selama lebih 80 tahun. Sekiranya benar, pendudukan ke
C atas tanah, selama tempoh yang panjang, tidak memberikan sebarang hak ke atas tanah tersebut kepada penduduk. Pemilikan bertentangan tidak diiktiraf dalam undang-undang (lihat perenggan 37 & 39).

(4) Andainya bahawa kemudahan air, elektrik dan telefon disambungkan ke
D rumah defendan di atas tanah tersebut, ia tidak terjumlah kepada sebarang bentuk kebenaran untuk defendan menduduki tanah tersebut. Pengawal selia yang menyediakan kemudahan tersebut bukanlah pemilik tanah. Mereka tidak berada dalam kedudukan untuk memberikan sebarang kebenaran sedemikian. Peruntukan utiliti tersebut tidak
E memberikan sebarang ekuiti atau kepentingan ke atas tanah kepada defendan. Ia tidak mengubah hakikat bahawa mereka menduduki tanah tersebut sebagai setinggan. Isu yang dibangkitkan oleh defendan berhubung pertukaran nama pada bil langsung tidak membantu kes defendan. Sebaliknya, ia mengesahkan defendan menduduki tanah
F tersebut sebagai setinggan (lihat perenggan 51 & 55–56).

(5) Defendan tidak membuktikan sebarang bentuk kebenaran untuk menduduki tanah tersebut. Pendudukan defendan ke atas tanah tersebut adalah tanpa lesen atau persetujuan daripada pemilik terdahulu
G (PTGWP) atau pemilik semasa iaitu plaintif. Pendudukan defendan ke atas tanah itu adalah menyalahi undang-undang. Sebagai penceroboh dan setinggan haram, defendan tidak mempunyai hak dalam undang-undang atau ekuiti ke atas tanah itu. Oleh itu, plaintif berhak untuk memiliki tanah tersebut. Sebagai setinggan, defendan tidak
H mempunyai kausa tindakan terhadap plaintif. Defendan tidak berhak di sisi undang-undang untuk sebarang pampasan (lihat perenggan 60 & 64).

(6) Tiada kerugian yang jelas berlaku pada tanah yang timbul daripada
I pendudukan defendan. Plaintif hanya berkata pembangunan tanah tersebut terhalang dan tertangguh. Bagaimanapun, plaintif tidak mengemukakan keterangan tentang kerugiannya, akibat kelewatan. Oleh kerana ia tidak dipastikan bahawa plaintif telah mengalami apa-apa kerugian sebenar, tiada award ganti rugi diberikan kepada plaintif (lihat perenggan 78).]

Cases referred to

Bukit Lenang Development Sdn Bhd v Penduduk-Penduduk yang Menduduki atas Tanah HS(D) 151079–HS(D) 151601, Mukim Plentong, Daerah Johor Bahru [1999] 6 MLJ 25, HC (refd)
Cahaya Ideal (M) Sdn Bhd v Orang-Orang yang Mengenali Diri sebagai Ponga & Ors [1999] MLJU 125; [1999] 3 CLJ 257, HC (folld)
Chong Kin Kong @ Chong Kim Kong & Ors v Hiew San Ngok & Ors [1997] MLJU 1, HC (distd)
DNC Asiatic Holdings Sdn Bhd & Ors v Honda Giken Kogyo Kabushiki Kaisha & other appeals [2020] 1 CLJ 799, CA (refd)
Datuk Bandar Kuala Lumpur & Anor v Tan Poh Wah & Ors [2018] 11 MLJ 198; [2019] 1 CLJ 661, HC (refd)
Immetec Sdn Bhd v Yong Tai Hoong & Anor [1995] 1 MLJ 390; [1994] 4 CLJ 692, HC (refd)
Lee Beng Lai & Ors v Tetuan Tokoyaki Property Sdn Bhd [2002] 3 MLJ 287; [2002] 3 CLJ 365, CA (refd)
Lee Loy & Ors v Poh Kam Sang & Ors [2018] 3 MLJ 240; [2017] 1 LNS 2023, CA (folld)
Sentul Murni Sdn Bhd v Ahmad Amiruddin BIN Kamaruddin & Ors [1998] MLJU 378; [1999] 5 CLJ 54, HC (refd)
Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors [1982] 1 MLJ 313, FC (refd)
Syarikat Kemajuan Kuari (M) Sdn Bhd v Su Bin Abdullah & Anor [2003] 1 MLJ 401, HC (distd)
Tekad Urus Sdn Bhd (as the attorney for KCSB Konsertium Sdn Bhd) v Penduduk yang menduduki kawasan yang dipanggil Desa Perwira dan lain-lain [2004] 2 MLJ 306; [2004] 2 CLJ 516, CA (refd)
Tetuan Tokoyaki Property Sdn Bhd v Sam Kok Sang @ Tham Sow Seng & Ors & Ors [2001] 1 MLJ 585; [2001] 4 CLJ 97, CA (folld)

Legislation referred to

National Land Code ss 48, 340, 340(1), 341
Rules of Court 2012 O 89

Mohd Yaacob bin Bakanali (Muhammad Azim bin Abd Ghani with him) (Lainah Yaacob & Zulkepli) for the plaintiff.
M Indrani (M Indrani & Assoc) for the defendants.

Quay Chew Soon JC:

INTRODUCTION

[1] The plaintiff ('P') sued the defendants for vacant possession of the land known as HS(D) 120531, PT 504, Seksyen 90, Bandar Kuala Lumpur, Daerah Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur measuring an area of

20237.5 sqmt ('land'). After a full trial, I gave judgment in favour of P. These are the grounds of my judgment.

THE PLAINTIFF'S CASE

[2] By way of a letter dated 16 December 2016, the Pejabat Tanah dan Galian Wilayah Persekutuan ('PTGWP') alienated the land to P for the purpose of building affordable housing (*rumah mampu milik*). In consideration thereof, P is required to pay land premium in the sum of RM8,615,490. P duly paid the same on 16 February 2017. Thereupon, PTGWP issued to P the document of title to the land duly registered in the name of P.

[3] Upon becoming the registered proprietor of the land, P's staff visited the land. They discovered that there were wooden residential houses and several business premises erected on the land. These were occupied by the defendants, who consists of Malaysians and non-Malaysians. Through investigation and enquiries, P obtained the particulars of the 128 occupants on the land from Dewan Bandaraya Kuala Lumpur ('DBKL').

[4] P had not rented out or granted any permission to the defendants or any other party authorizing the construction on or occupation of the land. Thus, the defendants' entry and occupation of the land is without licence or consent of P. The defendants are illegal squatters.

[5] P, through its solicitors, served an eviction notice dated 8 April 2019 and another eviction notice dated 17 July 2019 on the defendants. Which notified P's rights over the land and the defendants' trespass thereon. P demanded the defendants to vacate and remove all structures erected on the land. The defendants failed to comply with the said eviction notices.

[6] P avers that the defendants and the occupants therein have no right to occupy and remain on the land. The occupation of the land by the defendants is an act of trespass and is illegal. As registered proprietor, P is entitled to vacant possession of the land.

[7] P asserts that the defendants have caused P not to be able to commence the construction of affordable housing on the land. The defendants have obstructed or interfered with the development plan, resulting in loss and damage to P.

[8] In the statement of claim, P prayed for the following reliefs:

(a) declaration that P has the right to vacant possession of the land;

(b) the occupation of the land by the defendants and the occupants therein is illegal and constitutes trespass;

(c) the defendants and occupants shall immediately vacate and remove all structures built upon the land; and

(d) all loss and damage suffered by P resulting from the illegal occupation and trespass by the defendants and occupants be paid to P.

THE DEFENDANTS' CASE

[9] The defendants say that most of them have been residing on the land for more than 80 years without objection from any authorities. DBKL has full knowledge of the defendants' occupation as it had conducted a census 20 years ago and again in 2017. DBKL had also provided number plates to them.

[10] On 16 April 2002, the 20th defendant (PW3) wrote to DBKL applying to change the name in the water bill. DBKL provided a supporting letter dated 18 April 2002 to facilitate the same. All relevant authorities have knowledge that the defendants are residing on the land because they had been paying utility bills such as electricity, water and for telephone connection.

[11] The defendants complain that when alienation of the land was applied for, P did not inform or send any notice to them to vacate the land. P did not offer the affordable houses to the defendants, who are ready to buy the same. At the same time, the defendants say they cannot afford to pay a high price for the said houses.

[12] The defendants pleaded they will not resist handing over vacant possession of the land if they are allowed to buy the affordable houses which are to be built by P. Alternatively, the defendants demand to be paid reasonable compensation. They want more than the RM10,000 ex gratia payment offered by P.

[13] To this, P replied that the affordable houses are to be offered to prospective buyers registered with DBKL. The defendants are free to submit their applications to DBKL as interested buyers. Further, P avers that the ex gratia offer is on a without prejudice basis and without any admission of liability. P is under no obligation to pay any compensation or provide housing as demanded by the defendants.

[14] The defendants allege that in Originating Summons No WA-24NCVC-1746–08 of 2019 ('OS Action') filed by P under O 89 of the Rules of Court 2012 ('O 89 of the ROC'), the court purportedly ruled that the defendants are not trespassers and directed P to proceed with a writ action. The

defendants claim they are 'licensees coupled with equity'. They are merely requesting reasonable compensation from P or be offered with affordable houses for a reasonable price.

DECISION

[15] It is not in dispute that P is the registered proprietor of the land. I find that the defendants are illegal squatters and are not 'licensees coupled with equity'. They are not legally entitled to any compensation from P. It is my finding that P, as registered proprietor, is entitled to vacant possession of the land. My reasons are as follows.

The plaintiff's ownership of the land

[16] In submissions, the defendants concede that they are not denying P's ownership of the land. The defendants stated that they 'are voicing for appropriate compensation before vacating the land since they are not trespassers as alleged by P'. It seems to me that the defendants are merely holding out for a better compensation.

[17] This is admitted as much in para 13 of the statement of defence which reads:

> ... the said Defendants have requested for a better compensation than RM10,000 offered by the plaintiff. The said Defendants are requesting for a better and reasonable compensation or affordable house which the plaintiff is deciding to build ...

[18] To be sure, P's ownership of the land was clearly established at trial. Firstly, PW1 (the Pengarah of PTGWP) testified that pursuant to an application by P dated 25 November 2015, PTGWP vide a letter dated 16 December 2016 had alienated the land to P. PW2 (a director of P) gave evidence regarding the said application and subsequent alienation of the land. From the testimony of PW2, it was established that P had paid the land premium and other requisite sums. The said payment of RM8,615,490 was duly acknowledged by PTGWP.

[19] Secondly, PTGWP has issued to P the document of title to the land. P is duly registered as proprietor of the land. As registered proprietor, P enjoys an indefeasible title and interest in the land. This is by virtue of s 340(1) of the National Land Code ('the NLC') which stipulates that the title or interest of any person for the time being registered as proprietor of any land shall be indefeasible. Subject to certain vitiating circumstances such as fraud, misrepresentation or forgery, which are not relevant here.

Plaintiff's right to vacant possession of the land

[20] P instructed its solicitors to issue eviction notices to all the occupants on the land, namely the defendants in this suit. Which notified them of P's ownership of the land. And demanded them to vacate and remove all the structures built on the land. Copies of the 127 eviction notices dated 8 April 2019 are contained in the common bundle of documents.

[21] When the defendants failed to comply, P issued a second eviction notice dated 17 July 2019 to them. Copies of these second eviction notices were also produced in court. Again the defendants failed to comply.

[22] The occupation of the land by the defendants and the issuance of the two eviction notices dated 8 April 2019 and 17 July 2019 respectively were admitted by the defendants. See para 12 of the statement of defence and paras 4 and 5 of the 'Statement of Agreed Facts'.

[23] The only three defence witnesses namely DW1 (the 110th defendant), DW2 (the 24th defendant) and DW3 (the 20th defendant) admitted, during examination in chief and cross-examination, that they are occupying the land and that they had received the eviction notices. During cross-examination, they also admitted they had no permission to occupy the land from P or PTGWP.

[24] The cross-examination of DW1 (the 110th defendant) was as follows:

Q: Tidak ada. Now En Moo, kalau ikut surat ini dan apa yang keterangan ada, tanah ini sebelum ini kepunyaan Pejabat Tanah & Galian Wilayah Persekutuan. Tanah ini kepunyaan mereka masa itu. En Moo kata duduk sana sejak lahir?

A: Ya.

Q: En Moo ada apa-apa dokumen menunjukkan kebenaran daripada Pejabat Tanah Wilayah Persekutuan?

A: Tak ada.

Q: Tidak ada sebarang kebenaran?

A: Tak ada.

[25] The cross-examination of DW2 (the 24th defendant) was as follows:

Q: Saya cadangkan kepada En Kho, kalau itu Pejabat Tanah sudah bagi tanah ini kepada UDA Sentosa, itu tanah dulu milik itu Pejabat Tanah Wilayah.

A: Kerajaan.

Q: Kerajaan lah, Pejabat Tanah Wilayah. Now En Kho, ada ke apa-apa dokumen

atau pengetahuan En Kho depan Mahkamah ini dokumen, adakah itu Pejabat Tanah memberi sebarang kebenaran kepada En Kho atau lain-lain penghuni buat rumah atas tanah tersebut?

A: Itu rumah, dalam zaman bapa, datuk sudah ada. Saya bapa pun sana lahir sampai saya pun sana lahir.

Q: Saya punya soalan, ada apa-apa dokumen atau surat, itu Pejabat Tanah kata boleh you atau you punya bapa?

A: Tak ada. Saya tak pernah tengok.

Q: Tak pernah tengok. So, ini dokumen banyak-banyak depan Mahkamah pun setuju dalam ini pun tak ada apa-apa surat kan dari Pejabat Tanah kata you boleh tinggal sana?

A: Yang bagi kita?

Q: Ya?

A: Saya tak ada.

[26] The cross-examination of DW3 (the 20th defendant) was as follows:

Q: Setuju dengan saya bahawa kamu tidak ada sebarang kebenaran, permission dari UDA Sentosa untuk buat rumah atas tanah itu dan tinggal sana?

A: Saya beli ini rumah tahun 2001.

Q: Jawab saya punya soalan. Ada kebenaran ke tak ada dari UDA Sentosa?

A: Tak ada, saya beli rumah -

Q: Kamu pening. En Dewa, kamu pusing. Saya punya soalan sahaja jawab.

Tengok Hakim, jawab saya punya soalan. Ada kamu kebenaran dari UDA Sentosa Sdn Bhd? Itu sahaja.

A: Tidak.

Q: Tidak ada, betul?

A: Tidak.

...

Q: Surat tawaran tanah. UDA Sentosa pun ada tengok kan? Tanah ini dulu milik Pejabat Tanah & Galian Wilayah Persekutuan, betul?

A: Betul.

Q: En Dewa ada apa-apa kebenaran bertulis daripada Pejabat Tanah & Galian Wilayah bagi kebenaran kepada En Dewa duduk atas tanah itu?

A: Tidak.

[27] Further, the three defendants aforesaid admitted they are occupying the

land as squatters having no rights over the land.

[28] The cross-examination of DW1 (the 110th defendant) was as follows:

Q: Saya akan cadangkan, En Moo, bahawa En Moo dan lain-lain penghuni tidak mempunyai hak atas tanah tersebut sebagai owner, setuju?

A: Saya tak faham.

Q: Tak ada hak dalam tanah itu. Bukan Tuan punya, En Moo dan lain-lain penghuni bukan Tuan punya itu tanah, setuju?

A: Ya.

Q: Maka saya akan cadangkan, En Moo dan lain-lain penghuni yang duduk di atas tanah tersebut duduk sebagai setinggan, setuju?

A: Ya.

Q: En Moo juga setuju dengan saya bahawa memandangkan UDA Sentosa Sdn Bhd, sekarang Geran nama UDA Sentosa, so mereka ada hak atas tanah tersebut. Setuju?

A: Ya.

[29] The cross-examination of DW2 (the 24th defendant) was as follows:

Q: Saya ulang lagi. In simple language, memandangkan tanah ini nama Geran UDA punya, betul?

A: Betul.

Q: Saya cadangkan bahawa kamu dan lain-lain penghuni tiada right, tak ada hak untuk duduk dalam itu tanah?

A: Ya, betul.

[30] The cross-examination of DW3 (the 20th defendant) was as follows:

Q: Kawasan itu hanya itu rumah setinggan kan?

A: Rumah setinggan.

Q: Saya cadangkan En Dewa, saya cadangkan kepada En Dewa bahawa pemilik tanah ini adalah Plaintif, UDA Sentosa Sdn Bhd. Dia owner tanah. Setuju dengan saya?

A: Betul.

Q: Setuju. Saya cadangkan kepada En Dewa bahawa dia berhak atas tanah ini. Setuju dengan saya?

A: Ya, setuju.

[31] Based on the evidence adduced, I find that the defendants' entry and

occupation of the land were without permission from the previous owner of the land ie PTGWP. And also without permission of P, the current owner of the land. Hence, the defendants are trespassers and illegal squatters. They have no right or interest in the land.

[32] As illegal squatters, the defendants have no protection in law or in equity to enable them to claim a right to occupy the land. P, as registered owner, is entitled to evict them. I rely on the following authorities.

[33] In *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313, the Federal Court held that equity will not aid illegal occupation of squatters as they are wrongdoers. The court said (at p 314):

> In our opinion there is one issue which lies at the heart of this case. It is whether the appellants have a cause of action against the respondents. The answer is obvious. It is *clear beyond doubt that they cannot succeed because they are squatters*. *Squatters have no right either in law or in equity*. (See *McPhail v Persons Unknown* CA). It does not lie in their mouths to assert that they used and occupied the land as squatters.
>
> Their position under the National Land Code is not dissimilar. Section 48 of the Code is against them. It says that 'No title to State land shall be acquired by possession, unlawful occupation or occupation under any license for any period whatsoever. ... What equitable right or interest can be conjured up for the squatters who have illegally occupied State land? Squatters go into possession by, or as result of, illegal occupation of State land. Illegal occupation of State land is an offence under section 425 of the National Land Code It is well established that a *court of equity will never assist squatter to resist an order of possession* illegally acquired; it *will never intervene in aid of wrong-doers*.

[34] In the Court of Appeal case of *Lee Beng Lai & Ors v Tetuan Tokoyaki Property Sdn Bhd* [2002] 3 MLJ 287; [2002] 3 CLJ 365, the appellants appealed against the decision of the High Court judge who allowed the respondent's application under O 89 of the ROC to evict the appellants from the subject land belonging to respondent. The appellants claimed they were given permission to occupy the subject land by the state authority. They also claimed to have a right in equity to occupy the subject land.

[35] However, the Court of Appeal agreed that the appellants were trespassers in wrongful occupation of the subject land. As no licence or permission to occupy the subject land was granted by the state authority. The court said (at p 369):

> The state authority did not grant them licenses nor give them permission to stay on that land. The appellants were trespassers in wrongful occupation of the land. The learned judge was correct in making the order of possession against the defendants.

[36] In *Bukit Lenang Development Sdn Bhd v Penduduk-Penduduk yang Menduduki atas Tanah HS(D) 151079–HS(D) 151601, Mukim Plentong, Daerah Johor Bahru* [1999] 6 MLJ 25, the High Court held that squatters simpliciter had no right on the land and became trespassers upon alienation of the land. The court said (at p 36):

> ... a person who enters upon another's land and remains thereon to the detriment of the present owner is a trespasser, pure and simple.
>
> The defendants' presence is literally a blot on the landscape, for the plaintiffs are hindered in the uninterrupted usage of their own property.
>
> ... The law is settled that the summary proceedings for possession of the land can be employed in a situation where a person entitled to possession of the land claims possession of such land occupied by another person without his licence or consent or the licence or consent of any of his predecessor-in-title or in another situation where a person who has entered into occupation of the land with the licence or consent of the person entitled to possession of the land or any of his predecessor-in-title but remains in such occupation without licence or consent of the person entitled to possession or any predecessor-in-title of his.
>
> Thus on the facts, this court finds that the *defendants were squatters simpliciter and are therefore not possessed of any rights*.
>
> In fact *when the plaintiff became the registered proprietor the defendants became mere trespassers*.
>
> ...
>
> In any event *upon registration of the plaintiff as proprietor under s 340 of the National Land Code the plaintiff's rights accrue with immediate effect*. This right *includes the right to immediate possession of the said land*.

Occupation of the land for 80 years

[37] The defendants pleaded that most of them have been staying on the land for over 80 years. Apparently about 90% of the occupants, according to para 13 of the statement of defence. However, this is a bare averment which was not proven at trial. No documentary evidence was tendered to show that the defendants or their forefathers have been in occupation of the land for over 80 years. Further, it is unclear which 90% of the defendants have occupied the land for more than 80 years.

[38] The cross-examination of DW3 (the 20th defendant) was as follows:

> Q: Soalan 13, En Dewa. 13 ini kamu kata penduduk di sini dah duduk lebih 80 tahun, En Dewa letak bukan?
>
> A: Ya.
>
> Q: Tapi dalam dokumen yang ada depan Mahkamah En Dewa, ada ke dokumen

yang kata dah duduk 80 tahun lebih? Ada apa-apa dokumen? Kamu dah tengok ini dokumen semua kan, dah lama kan? Dari awal En Dewa terlibat kes ini. Adakah dokumen cakap dah 80 tahun kita duduk. Ada evidence ke?

A: Kalau bukti nak cakap, yang itu tol

Q: Itu plate?

A: Plate sahaja., macam ini saja. Lagi penduduk ada satu oang tua lebih kurang 80 umur, masih beranak di sana, KGU 30.

[39] Even if true, occupation over land, for however long a period, does not confer any right over the said land to the occupier. Adverse possession is not recognised in law. I rely on the following statutory provisions and authorities.

[40] Section 48 of the NLC stipulates that there can be no adverse possession against the state. It reads:

No title to State Land shall be acquired by possession, unlawful occupation or occupation under any license for any period whatsoever.

[41] Under s 341 of the NLC, adverse possession cannot extinguish titles or interests in land. It reads:

Adverse possession of land *for any length of time* whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any person or body entitled to an interest therein, and accordingly, the Limitation Act 1953, shall in no circumstances operate to extinguish any title to, or interest in, land.

[42] In *Datuk Bandar Kuala Lumpur & Anor v Tan Poh Wah & Ors* [2018] 11 MLJ 198; [2019] 1 CLJ 661, the High Court held that the landowner had a right to claim vacant possession of the subject land from the defendants who were squatters on the land. Even though the defendants had occupied the subject land since the 1940s and were issued with TOL (temporary occupation licence). The defendants' status remained as squatters and trespassers. The court said (at pp 679 and 682–683):

[59] And, the fact *that the defendants had been occupying the land over a long period of time* and had done substantial improvements to the land and/or may have *had a TOL over the land* and/or had spent money to fortify the land *does not per se, confer any rights on the occupants or users of the land.*

...

[67] Thus, the *long and continued usage of the land per se confers absolutely no legal or equitable rights on the occupier*. In *Cahaya Ideal (M) Sdn Bhd v Orang-Orang Yang Mengenali Diri Sebagai 'Ponga' & Ors* [1999] MLJU 125; [1999] 3 CLJ 257, High Court (per Abdul Malik Ishak J) said at p 285 (CLJ); p 18 (MLJ) that:

In my judgment, the fact that the defendants have been in occupation of that plot

of land marked as 'C31' in the layout plan for the last 20 years would be irrelevant and immaterial as it did not confer any interests on the defendants nor did it improve the defendants' interests on that portion of land as claimed by the defendants. In short, an alienated land cannot be obtained by adverse possession under the NLC.'

[43] In *Immetec Sdn Bhd v Yong Tai Hoong & Anor* [1995] 1 MLJ 390; [1994] 4 CLJ 692, the High Court held that occupation for 40 years does not affect the title of the landowner. The court said (at p 395 (MLJ); p 695 (CLJ)):

... my considered view is that under s 340 of the National Land Code 1965 (NLC), the indefeasibility of title of a registered owner is assured. The plaintiff became the registered owner of the land in 1987. Prior to that, the land was owned by the Government. There is no evidence to support the defendants' claim that the previous owner has given them permission to remain on the plaintiff's land. The *fact that the defendant has been staying and occupying the premises for the last 40 years does not affect the title of the plaintiff as the registered owner because the defendants cannot claim adverse possession*.

Number plates

[44] The defendants pleaded that the houses on the land have number plates purportedly issued by DBKL. However, the significance of the number plates is unclear. At trial, the defendants failed to adduce evidence regarding the purpose of issuance of the number plates. No evidence was led as to why the number plates were issued to the defendants.

[45] In cross-examination, DW3 admitted he is unsure of the purpose of the number plates:

Q: Bukan, you dengar saya punya soalan. Siapa bagi ini plate nombor ini siapa bagi. Tahu ke tak tahu.

A: DBKL bagi.

Q: DBKL yang bagi. Tahu kenapa dia bagi?

A: Tak tahu.

[46] Moreover, only three defendants testified in court. There is no evidence from the other absent defendants regarding their respective number plates.

[47] In fact, DW3 admitted that the number plate of his house was not produced in evidence:

Q: Tadi En Dewa kata plate kan? So plate, tengok, dengan kebenaran Yang Arif, B3. Tengok B3, muka surat 500. Ini plate yang kamu cakap?

A: B?

Q: 500. Itu plate kan yang kamu cakap tadi?

A: Ya.

Q: Ada plate yang rumah kamu punya ke sini?

A: *Sini rumah saya tak ada* tapi —

Q: Rumah kamu tak ada plate sini?

A: Ada, tapi *ini nombor bukan rumah saya*. Saya punya 1361.

Q: Jawab saya punya soalan sahaja. You punya rumah punya plate ada sini ke tak ada?

A: Ikut sini *tak ada*.

Q: En Dewa tahu ke ini plate siapa bagi?

A: Ini ada yang rumah punya. Kampung punya rumah. Q: Dengar soalan. Siapa bagi ini, tahu ke?

A: Mungkin penduduk sana.

Q: Penduduk bagi penduduk?

A: Mungkin dari penduduk. Penduduk rumah sana ada punya.

[48] The incontrovertible fact is that the number plates were not issued by P (the current owner of the land) or by PTGWP (the previous owner of the land). Assuming DBKL issued the number plates, DBKL was never the owner of the land. Thus, the number plates can never amount to any form of permission for the defendants to occupy the land. The defendants remain as illegal squatters trespassing on the land.

Supply of utilities

[49] The defendants pleaded that their houses on the land have supply of water, electricity and telephone facilities. However, as only three defendants testified in court, there is no evidence from the other absent defendants regarding supply of the said utilities to their respective houses.

[50] In the cross-examination of PW1, counsel for the defendants attempted to suggest that since water and electricity amenities are accorded to the defendants, the defendants are not trespassers. PW1 refuted the claim by saying that the land occupation and the supply of water and electricity are clearly two distinct matters.

[51] Assuming that water, electricity and telephone facilities were connected to the defendants' houses on the land, that does not tantamount to any form of permission for the defendants to occupy the land. The regulators providing

those utilities are not the owners of the land. They are not in the position to grant any such permission. I am guided by the following authorities.

[52] In *Lee Loy & Ors v Poh Kam Sang & Ors* [2018] 3 MLJ 240; [2017] 1 LNS 2023, the Court of Appeal affirmed the decision of the High Court which granted summary possession of the subject land under O 89 of the ROC. The High Court had held that supply of water and electricity does not connote permission to occupy the subject land. The findings of the High Court were cited as follows:

> [17] First, the Court cannot force the respondents to sell the subject land at a price that the parties have never agreed to. Second, the 6-year period requested by the appellants was unreasonably long bearing in mind the appellants who were clearly squatters had unlawfully occupied the subject land for an already long period; and that such occupation was prejudicial to the respondents' right of enjoyment of the subject land. Third, the *Court should not protect squatters* , as decided by the Federal Court in *Sidek bin Haji Muhammad & 461 Others v The Government of the State of Perak & Others* [1982] 1 MLJ 313. Next, the *provision of electricity and water supplies does not amount to acknowledgment of lawful occupation of the subject land*. Finally, the appellants have never challenged the respondents' title to the subject land or their validity of title. All that was challenged was that permission to occupy the subject land had been allegedly given by first the deceased, and later the respondents. There was however, no evidence to substantiate such claims.

[53] In *Cahaya Ideal (M) Sdn Bhd v Orang-Orang yang Mengenali Diri sebagai Ponga & Ors* [1999] MLJU 125; [1999] 3 CLJ 257, the High Court held that payments of quit rent, assessment, electricity and water bills cannot be used as barometers to gauge ownership of land. The court said (at pp 288–289):

> There the court held that *payments of quit rents, assessment rates, electricity and water bills cannot be used as barometers to gauge ownership of lands* without cogent supportive evidence in that direction. The court too held that the *payments of quit rents and assessments can never give the persons who make those payments titles* to those parts or portions of the land.
>
> ...
>
> The *water and electricity supplies accorded to the defendants cannot confer any equity or interest* on the defendants binding on the plaintiff.

[54] In *Tetuan Tokoyaki Property Sdn Bhd v Sam Kok Sang @ Tham Sow Seng & Ors & Ors* [2001] 1 MLJ 585; [2001] 4 CLJ 97, the High Court held that the supply of amenities does not denote permission to live on the subject land. The court said (at p 597 (MLJ); p 111 (CLJ)):

> As for the contention by the first defendant's counsel that the supply of water and electricity and litter bins has been provided, this court with regret is not able to

accept that submission as a ground for him to continue to live on the plaintiffs' lot because firstly *by providing the said services or amenities does not necessarily mean that the state authority has impliedly given the 1st defendant permission to live or continue to live on the said lot*;

[55] In my opinion, the supply of amenities (such as water, electricity and telephone connection as in the instant case) does not signify permission for the defendants to occupy the land. The provision of such utilities does not confer any equity or interest on the land to the defendants. It does not change the fact that they are occupying the land as squatters.

[56] The defendants refer to a letter dated 18 April 2002 from DBKL to Jabatan Bekalan Air with regard to the change of name of DW3's water bill. However, this letter does not help the defendants' case at all. Instead, it confirmed that DW3 (the 20th defendant) is occupying the land as a 'setinggan' (squatter).

[57] The said letter reads:

> Jurutera Daerah Air
>
> ...
>
> SOKONGAN PERTUKARAN NAMA BIL AIR BAGI *RUMAH SETINGGAN* DI ALAMAT NO. 1361-b (3813 DBKL) LORONG SHAH BANDAR, OFF JALAN PEEL KUALA LUMPUR
>
> Dengan hormatnya saya diarah menarik perhatian tuan mengenai perkara di atas.
>
> 2. Berhubung perkara di atas, jabatan telah menerima permohonan untuk pertukaran nama di atas bil daripada *penghuni dan pemilik rumah setinggan* di alamat di atas iaitu daripada TAN YOKE CHAY No. K/P: A 2077378 kepada DEWA A/L ARUMUGAM No. K/P : 751016-08-5991.
>
> 3. Justeru itu, jabatan ini tiada halangan dengan permohonan tersebut.

[58] In the aforesaid letter, DBKL stated that it has no objection to the change of name on the water bill to DW3's name. However, the fact remains that DBKL was never the owner of the land. DBKL is in no position to grant any form of permission for the defendants to occupy the land.

[59] During cross-examination, DW3 admitted the said letter confirms that he is a squatter:

> Q: Kamu beli itu rumah setinggan, betul?
>
> A: Ya.
>
> Q: Betul. En Dewa, tengok bundle ini, B3. Tengok itu last muka surat 512,

belakang. Ini surat En Dewa kan dari Bandaraya kepada Jurutera Daerah. Ini yang kamu minta dekat Bandaraya?

A: Ya.

Q: Betul?

A: Betul.

Q: Masa itu nak tukar itu meter air?

A: Meter air.

Q: Air, betul, rumah setinggan yang kamu beli nak tukar meter air, betul?

A: Ya, betul.

Q: Surat ini pun kata itu rumah setinggan, betul?

A: Ya.

Q: Betul kan itu heading sana?

A: Ya.

[60] My conclusion is that the defendants have not proven any form of permission to occupy the land. I find that the defendants' occupation of the land is without licence or consent. Whether it be from the previous owner (PTGWP) or the current owner (P). The defendants' occupation of the land is illegal. As trespassers and illegal squatters, the defendants have no right in law or in equity whatsoever over the land. P is therefore entitled to possession of the land.

Whether the defendants' occupation of the land are as licensees with equity who are entitled to compensation

[61] The defendants pleaded they are licensees coupled with equity. They are to be given reasonable compensation or be offered affordable housing for a reasonable price. Paragraph 16 of the statement of defence reads:

> Paragraph 18 of the said Statement of Claim is referred and the said Defendants state that although the *Plaintiff is the registered owner of the said property* but the said Defendants are 'Licensee coupled with equity' and not trespassers like what the plaintiff asserts. The said Defendants are to be given a reasonable compensation and/or be offered with affordable house for a reasonable price to the said Defendants who are eligible to purchase.

[62] However, it was established that the previous owner of the land ie PTGWP had not given any permission to the defendants to occupy the land. On behalf of PTGWP, its Pengarah PW1 gave evidence to that effect. Likewise, it was established that the current owner of the land ie P had not given any

permission to the defendants to occupy the land. On behalf of P, its director PW2 testified to this.

[63] Clearly, the defendants are not licensees. They have been occupying the land without any licence or consent from PTGWP or P. The defendants are trespassers in wrongful occupation of the land, against whom an order for possession ought to be made in favour of P as proprietor of the land. Really all that the defendants are saying is that they have been staying on the land for over 80 years and DBKL has knowledge of their occupation of the land. That however does not improve their position.

[64] As squatters, the defendants have no cause of action against P. They have no interest in the land or in equity. The defendants are not legally entitled to any compensation. Moreover, in their Statement of Defence the defendants did not raise any counterclaim against P. Hence, no award of compensation can be made in favour of the defendants in this action.

[65] The defendants cited the High Court case of *Sentul Murni Sdn Bhd v Ahmad Amiruddin BIN Kamaruddin & Ors* [1998] MLJU 378; [1999] 5 CLJ 54 (affirmed by the Court of Appeal in [2000] 4 CLJ 375) and the Court of Appeal case of *Tekad Urus Sdn Bhd (as the attorney for KCSB Konsertium Sdn Bhd) v Penduduk yang menduduki kawasan yang dipanggil Desa Perwira dan lain-lain* [2004] 2 MLJ 306; [2004] 2 CLJ 516 to support their argument for compensation. However, those two cases are distinguishable and are not applicable on the facts of the present case.

[66] The brief facts of *Sentul Murni* are these. The plaintiff had purchased the subject land with the defendants living on the subject land. The subject land was purchased from one STLR Sdn Bhd. Prior to that, the subject land had belonged to the government. The plaintiff claimed the defendants were trespassers and sued for vacant possession of the subject land. The defendants contended they were lawful occupants on the subject land coupled with an equity. They contended their occupation of the subject land was acquiesced by the state authority, the predecessor of the plaintiff.

[67] There was approval given by the State Executive Committee of Selangor to alienate the subject land to the Malay occupants residing on the subject land. Subsequently the land Executive Committee of Wilayah Persekutuan expressly agreed that the said approval of the State Executive Committee of Selangor be carried out. On those facts, the court concluded that there is equity in favour of the occupants.

[68] The High Court said (at p 67):

I find that there is an *express undertaking* given in 1976 by the Land Executive Committee of Wilayah Persekutuan that part of the Land in Kampung Chubadak *would be alienated to the Malay residents occupying the Land in accordance with the Selangor State Exco's decision* in 1962. I also find that according to Dato' Harun Idris, the former Menteri Besar of Selangor, it was *based on the promise given by the Selangor State Exco* in 1962 that he *promised the residents of Kampung Chubadak ownership of the land occupied by them*.

On the facts so far established I find that there is certainly licence and consent from the state authority that the defendants can occupy or continue to occupy the land. There is also no evidence that the Land Executive Committee of Wilayah Persekutuan has changed or revoked its policy in relation to the occupation of the Malay residents in Kampung Chubadak at any time. Whilst s 48 of the NLC expressly prohibits any adverse possession against the state, the said land in question had passed from the state to STLR Sdn Bhd and then to the present plaintiff. There is no question of any adverse possession against the state coming into question. The defendants herein are seeking to enforce their equity against the *plaintiff who took over ownership of the land with full notice of the existence of the defendants' equity*. Whilst I have found that the defendants have an equity to be reckoned with, *such equity must be subject to the plaintiff's over-riding right to legal ownership of the land* pursuant to the NLC for which said purchase the plaintiff had given valid consideration. The plaintiff will therefore have its vacant possession subject to the plaintif *compensating the four defendants for all costs incurred in the construction and renovation of their respective houses, or alternatively the cost of the present value of the said houses* to be assessed by an independent valuer to be mutually agreed to by the parties or if they fail to agree, to be appointed by the court, whichever alternative to be decided by the defendants, and all costs incidental to relocating the defendants.

[69] The facts of the instant case are quite different. Here, there was never any form of approval by PTGWP in relation to the occupation of the land by the defendants. The defendants remain squatters simpliciter at all times. It is also pertinent to note that in *Sentul Murni*, there was a counterclaim lodged by the defendants against the plaintiff. Hence, the plaintiff was given vacant possession of the subject land subject to compensating the defendants for the renovation costs of their houses under the said counterclaim. In the instant suit, there is no counterclaim filed by the defendants against P.

[70] As regards *Tekad Urus*, it concerned summary proceedings for possession of land under O 89 of the ROC. The application was refused because the court held there were triable issues that should not be dealt with summarily under O 89 of the ROC. In contrast, the action before me is not one under O 89 of the ROC. It has gone through a full trial with viva voce testimony delivered by witnesses.

[71] Previously, P had applied for possession of the land under O 89 of the ROC vide the OS Action. According to P, the court in the OS action held there were issues to be tried and the appropriate mode of action is by way of a writ.

A This is not disputed as para 14 of the statement of defence states:

> The court also said that if the plaintiff wishes to proceed with an action against the defendants, the plaintiff should file a Writ against the defendants.

B **[72]** P has done just that in instituting the instant suit. The defendants argued that P is estopped from maintaining that they are trespassers by virtue of the OS action. That argument is misconceived. P is at liberty to maintain that position and ventilate the same issues in the instant action.

C *Whether defendants are liable to pay for the loss suffered by plaintiff*

[73] P pleaded that the defendants' wrongful occupation obstructed the construction of affordable houses planned by P on the land. This has caused P to suffer loss and damage. PW2 testified that as a result of the occupation of the
D land by the defendants, P has been prevented from commencing the development of building the affordable housing as prescribed in the issue document of title.

[74] In submissions, P requested nominal damages in the sum of RM5,000
E against each defendant to compensate the loss suffered by P. P cited the following authorities.

[75] In *Syarikat Kemajuan Kuari (M) Sdn Bhd v Su Bin Abdullah & Anor* [2003] 1 MLJ 401, the High Court awarded nominal damages in the sum of
F RM5,000 where the damage was obvious but the loss could not be quantified. The court said (at p 407):

> I find that the photographs tendered and the evidence of the plaintiffs (SP2, SP4 and SP3) at the trial clearly show that the plaintiffs' land and *hundreds of their fruit trees had been destroyed by the earth and stones that fell on the plaintiffs' land* due to the
G negligence on the part of the defendant in carrying out its activities as a quarry operator. *The damage was obvious*. Unfortunately, the plaintiffs could not quantify their losses, The only mistake the trial judge made was that he awarded a combined nominal damages for special and general damages of RM10,000 for each plaintiff. Since the trial court found that the damages could not be quantified, he should not
H have allowed nominal damages under special damages, Instead, he should have awarded nominal damages under the general damages only.
>
> It is pertinent to note that trespass to land is a tort actionable per se, so that nominal damages can be given even if there is no proof of damage. Though the granting of nominal damages is up to the discretion of the trial court, it is trite law that the
I discretion must be exercised judicially.

[76] In *Chong Kin Kong @ Chong Kim Kong & Ors v Hiew San Ngok & Ors* [1997] MLJU 1, the High Court awarded nominal damages in the sum of RM5,000 where the loss arising from excavation of sand and pebbles on the

subject land could not be computed. The court said (at p 17):

> Accordingly, it is my finding that the plaintiffs have failed to establish their claim as to the volume of *sand and pebbles excavated from their land* by the 3rd Defendant. And it is their burden to do so. (See: *Popular Industries Ltd v Eastern Garment Manufacturers Sdn. Bhd.* [1989] 3 MLJ 360). Thus, it would not be possible to compute their actual loss. However, that should not mean that they get nothing. They should be entitled at least to nominal damages. (See: Popular Industries Ltd). In my judgment the sum of RM5,000.00 should be a sufficient nominal damages for the plaintiffs due to the negligence on the part of the 3rd Defendant in encroaching and *excavating on their land*.

[77] Those two cases are distinguishable and are not applicable on the facts of the present case. In *Syarikat Kemajuan Kuari*, the damage to the subject land was obvious. The subject land and hundreds of fruit trees thereon had been destroyed by the earth and stones that fell on the subject land. In *Chong Kin Kong*, sand and pebbles had been excavated and extracted from the subject land.

[78] In the present case however, there is no obvious damage to the land arising from the defendants' occupation. P simply said that the development of the land was hindered and delayed. However, P did not adduce evidence as to what its loss is, as a result of the delay. Since it was not established that P has suffered any actual loss, I decline to award damages, nominal or otherwise, to P.

Failure of the other defendants to testify

[79] During the trial, only three defendants testified in court. Namely: (a) the 110th defendant (PW1); (b) the 24th defendant (PW2); and (c) the 20th defendant (PW3). The other defendants did not testify. P argued that the failure of the other defendants to testify raises the presumption of adverse inference under s 114(g) of the Evidence Act 1950. The said section reads:

> The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> ILLUSTRATIONS
>
> The court may presume:-
>
> ...
>
> (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

[80] In the 'List of Witnesses' filed by the defendants during pre-trial case management, 13 witnesses were listed. During case management, counsel for the defendants explained that when preparing the witness statements, they discovered that the answers of the witnesses are almost the same. Therefore, to shorten trial time, the defendants decided to call only three witnesses.

[81] The law is clear that there must be evidence of suppression of material evidence or a material witness, by the party who does not call the witness. (See *DNC Asiatic Holdings Sdn Bhd & Ors v Honda Giken Kogyo Kabushiki Kaisha & other appeals* [2020] 1 CLJ 799 at p 821). Here, there is no evidence of any withholding or suppression of material evidence or a material witness simply because the other defendants did not testify. In these circumstances, I do not think drawing an adverse inference against the defendants pursuant to s 114(g) of the Evidence Act 1950 is justified.

Consent judgments with certain defendants

[82] Consent judgments were entered into between the parties in respect of nine defendants. Namely the 17th, 28th, 29th, 30th, 41st, 43rd, 82nd, 88th and 118th defendant. Those defendants who had reached a settlement with P will be dealt with in accordance with the terms of their settlement.

CONCLUSION

[83] For the reasons above, I allowed P's claim. I made the following orders and declarations:

(a) P is entitled to vacant possession of the land;

(b) the occupation of the land by the defendants and the occupants therein is illegal and constitutes trespass on the land;

(c) the defendants and occupants on the land shall immediately vacate and remove all structures built upon the land.

[84] I ordered each defendant to pay RM400 in costs to P.

Claim allowed with costs.

Reported by K Selvaraju